



**Public Intoxication 123.46**  
**Chemical Substance Abuse 125**



**Iowa Law Enforcement Academy**

# Session Objectives

Upon successfully completing this session, the student will be able to:

- Review and Discuss Iowa Code 123.46 Consumption or Intoxication in Public Places
- Review and Discuss Iowa Code 125.34 – Treatment and Services For Intoxicated Persons and Persons Incapacitated by Alcohol, Iowa Code 125.40 – Criminal Law Limitations, and Iowa Code 125.91 – Emergency Detention
- Discuss and Implement the investigation for the Moot Court Practical Exercise



# Black's Law Dictionary

## Definition

### **Intoxication:**

A diminished ability to act with full mental and physical capabilities because of alcohol or drug consumption.

# Time is Money

Public Intoxication Arrests are a Big Drain on Department Resources:

- Officer Time
- Agency Time
- Community Resources

***Approximately \$100 million dollars are expended annually to handle chronic drunk offenders***

## Defines Alcoholism:

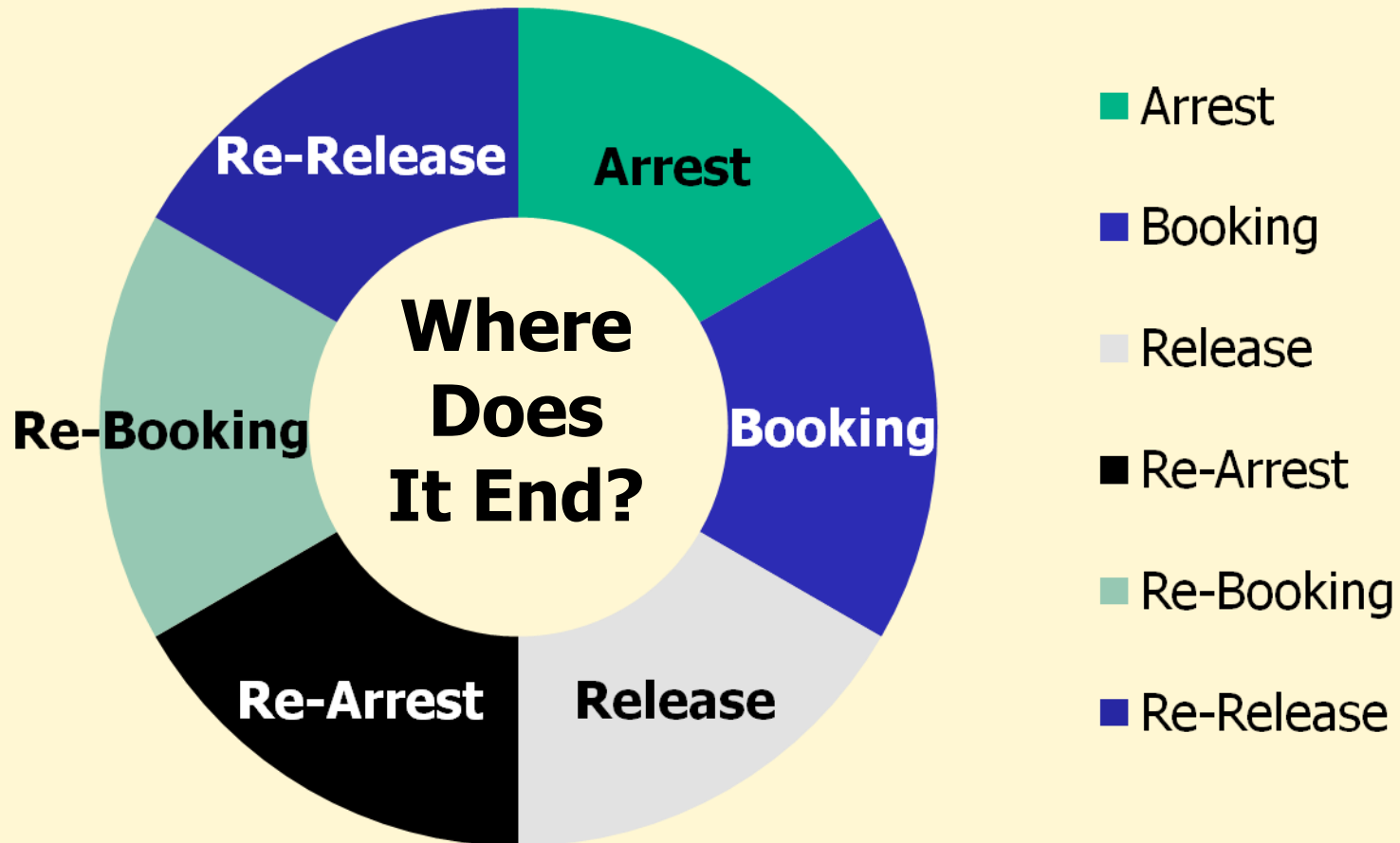
Form of **CHRONIC SUICIDE**

- Unconscious effort
- A means of slow self destruction

# Revolving Door — Does It Work?

## Public Intoxication Arrest

(The Revolving Door)



# Definition: Alcoholism

Chronic Disorder involving  
Physiological and Psychological  
variables which render certain  
individuals incapable of refraining  
from frequent alcohol ingestion to  
the point of both continued  
intoxication and eventual  
interpersonal and social dysfunction.

# Alcoholism: Elements

## ***Elements:***

1. Compulsive
2. Long Duration
3. Intoxication Results — Physically/Mentally
4. Not Able to Function Interpersonally



# Alcoholism: Results

## ***Results:***

1. Vivid Auditory & Visual Hallucinations
2. Marital Problems
3. Vocational Difficulty
4. Physical Impairment (Brain Damage, Liver, Gall Bladder, Vessels in Esophagus Ruptured)
5. Legal Involvement
6. Death

# Alcoholism: Causes

## ***Causes:***

1. *Marital Problems*
2. *Anxiety*
3. *Depression*
4. *Conflict*
5. *Escape – Most Frequent Cause*
6. *Poor Self Image*

# Alcoholism - Police Officer Profile

## ***Alcoholism & Police Officers:***

1. Divorced
2. Lonely
3. Approximately forty years of age
4. 15 to 20 years of service

## ***Alcohol Abuse***

1. 90% of police officers consume alcohol
2. 1/4 of officers are alcohol dependent because of on the job stress- twice as high as for the general population
3. Rates for arrest for DUI or DWI are higher than for the general population

# Alcoholism: Myths & Realities

***Myth:*** Once an alcoholic, always an alcoholic

***Reality:*** Alcoholism is a disease for which recovery is guaranteed if the alcoholic begins and sticks with a recovery program. If not, what's guaranteed is premature death.

# Alcoholism: Myths & Realities

***Myth:*** Alcoholism is caused by a lack of willpower, immorality, or weak character.

***Reality:*** No one really knows what drives a person to drink. Studies alternately have implicated physical, genetic, psychological, environmental, and social factors.

# Alcoholism: Myths & Realities

***Myth:*** All alcoholics are skid-row drunks.

***Reality:*** Many alcoholics hold high-level jobs and function well at work for years before their performance is noticeably affected by drinking. Only 3 to 5% of an estimated two (2) million plus alcoholics are considered "Skid Row" types

# Alcoholism: Myths & Realities

---

***Myth:*** If an alcoholic can stop drinking, he or she doesn't have a problem.

***Reality:*** *Abstinence is not a sign that someone is free of alcoholism. Alcoholics Anonymous (AA) calls these abstainers "dry drunks" because they have no real understanding of their condition, no new ways to cope, and are almost certain to "fall off the wagon."*

# Alcoholism: Myths & Realities

***Myth:*** Alcoholics drink every day.

***Reality:*** Alcohol abuse patterns vary. Some people get drunk daily, and others only on the weekends. Some stay sober for months and then go on a long binge.

***Source:*** E. Kirschman, *I Love a Cop: What Police Families Need to Know*, 1977.



# Iowa Code 123.46

## **PUBLIC INTOXICATION**

# 123.46 CONSUMPTION OR INTOXICATION IN PUBLIC PLACES

## NOTIFICATIONS - CHEMICAL TESTS - EXONERATION

2. A person **shall not** use or consume alcoholic liquor, wine, or beer upon the public streets or highways.
  - A person **shall not** use or consume alcoholic liquor in any public place except premises covered by a liquor control license.
  - A person **shall not** possess or consume alcoholic liquors, wine, or beer on public school property or while attending a public or private school-related function.
  - A person **shall not** be intoxicated or simulate intoxication in a public place.
  - A person violating this subsection is guilty of a simple misdemeanor.

# 123.46 CONSUMPTION OR INTOXICATION IN PUBLIC PLACES

## NOTIFICATIONS - CHEMICAL TESTS - EXONERATION

3. A person **shall not** stimulate intoxication in a public place. A person violating this subsection is guilty of a simple misdemeanor.
4. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer **shall** inform the person that the person **may** have a chemical test administered at the person's own expense.
  - If a device **approved** by the **Commissioner of Public Safety** for testing a sample of a person's breath to determine the person's blood alcohol concentration is available, that is the **only test that need be offered** the person arrested. (**PBT** or **Data Master**)
  - In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation.

# 123.46 CONSUMPTION OR INTOXICATION IN PUBLIC PLACES

## NOTIFICATIONS - CHEMICAL TESTS - EXONERATION

- The **percentage of alcohol** present in a person's blood, breath, or urine established by the results of a chemical test performed within **two hours** after the person's arrest on a charge of public intoxication is **presumed** to be the percentage of alcohol present at the **time of arrest**.

5.      *a* . A peace officer **shall** make a reasonable effort to identify a **person under the age of eighteen** who violates Iowa Code 123.46 and **refer** the person to **juvenile court**.

*b* . A juvenile court officer shall notify the person's custodial parent, legal guardian, or custodian of the violation. In addition, the juvenile court officer shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school, of the violation.

## 123.46 CONSUMPTION OR INTOXICATION IN PUBLIC PLACES NOTIFICATIONS - CHEMICAL TESTS - EXONERATION

A reasonable attempt to notify the person includes, but is not limited to, a **telephone call** or **notice by first-class mail**.

6. Upon the expiration of **two years** following conviction for a violation of this section, a person may **petition** the **court** to **expunge** the **conviction**, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the **two-year period**, the person shall be deemed expunged as a matter of law.

***NOTE: Clerk of District Court is responsible to remove the record.***

# The arrest decision is based on...

***...all evidence*** accumulated during personal contact.

## Face-to-Face Observation

- Witness Statements
- Call for Service Type

## Standard Field Sobriety Testing (SFSTs)

## Preliminary Breath Tests



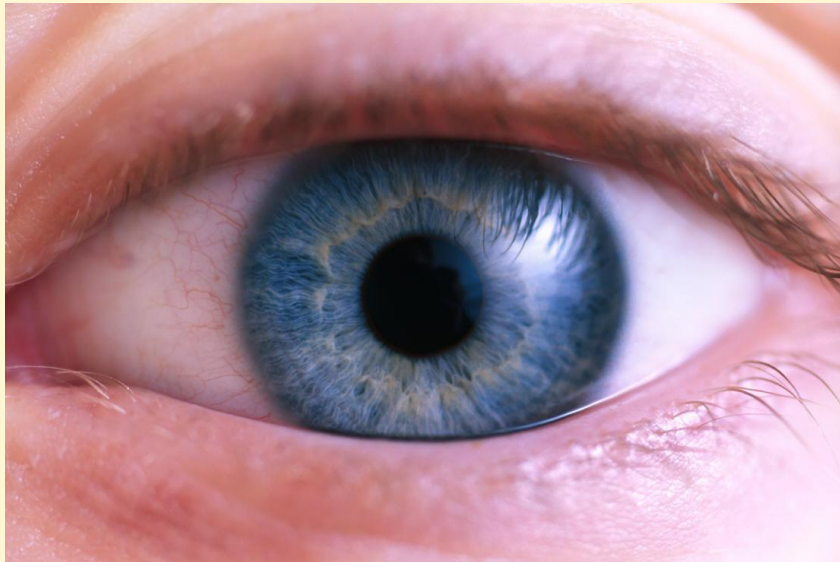
# Iowa Code 123.3 (27)

## Definition

### **Public Place:**

“Any place, building, or conveyance to which the public has or is permitted access”

# Intoxication Symptoms and Signs



What do you see?

- Bloodshot eyes?
- Soiled clothing?
- Alcohol containers?
- Unusual actions?
- Bruises, bumps, scratches?



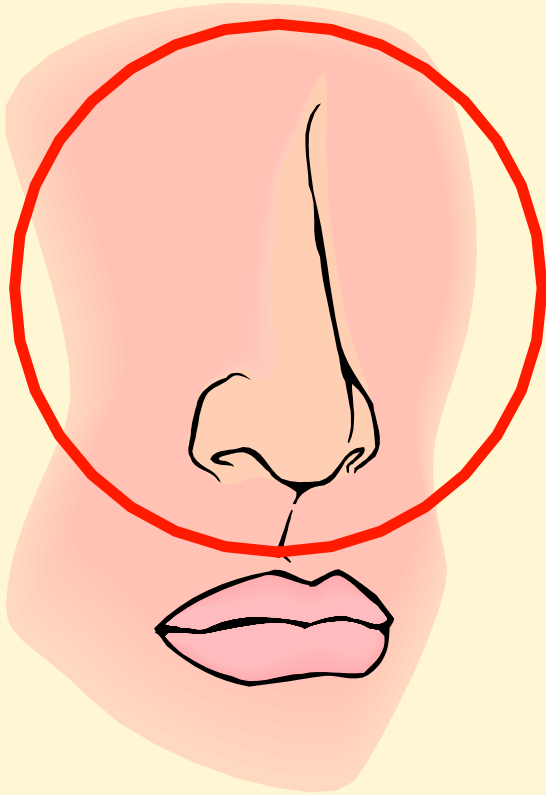
# Intoxication Symptoms and Signs



What do you hear?

- Slurred speech?
- Admission of drinking?
- Inconsistent responses?
- Unusual statements?
- Abusive language?

# Intoxication Symptoms and Signs



The Nose

What do you smell?

- Alcoholic beverage?
- Cover-up odors?
- Other unusual odors?

# Psychophysical (Field) Testing

## **Standardized Field Sobriety Testing** *(Nationally Recognized)*

1. Horizontal Gaze Nystagmus
2. Walk & Turn
3. One Leg Stand

***NOTE: Based upon the circumstances you may want to do additional psychophysical testing using other type tests beyond the Standardized Field Sobriety Tests (i.e. finger count, alphabet, etc.)***

# Horizontal Gaze Nystagmus

- |   |   |
|---|---|
| 1 | Remove eyeglasses / Check for Contacts  |
| 2 | Stimulus held in proper position <i>(12" – 15" from nose, just above eye level)</i>   |
| 3 | Check for EQUAL PUPIL SIZE  |
| 4 | Check for EQUAL TRACKING  |
| 5 | <p>LACK OF SMOOTH PURSUIT</p> <p><i>Smooth movement from center of nose to maximum deviation in approximately two (2) seconds and then back across subject's face to maximum deviation in right eye, then back to center.</i></p> <p><i>Check left eye, then right eye (REPEAT)</i></p> |
| 6 | <p>DISTINCT &amp; SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION</p> <p><i>Eye held at maximum deviation for a minimum of four (4) seconds (no white showing)</i></p> <p><i>Check left eye, then right eye (REPEAT)</i></p>   |
| 7 | <p>ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES</p> <p><i>Eye moved slowly (approximately four (4) seconds) from center to 45 degree angle (end of shoulder)</i></p> <p><i>Check left eye, then right eye (REPEAT)</i></p>  |
| 8 | Check for Vertical Gaze Nystagmus - - - - - (REPEAT)  |

# Horizontal Gaze Nystagmus

## Impairment Clues

- |   |   |
|---|---|
| 1 | Lack of Smooth Pursuit                                |
| 2 | Distinct and Sustained Nystagmus at Maximum Deviation |
| 3 | Onset of Nystagmus prior to 45 Degrees                |

## Impairment Scoring

Maximum Number of Clues for Each Eye	3
Maximum Number of Clues for Both Eyes	6
<i>Minimum Number of Clues of Intoxication to indicate a BAC Level of .08 or Above</i>	<b>4</b>

# Walk & Turn

1	Instructions given from a SAFE POSITION.
2	Tells subject to place feet on a line in heel-to-toe manner (left foot behind right foot) with arms at sides and gives demonstration.
3	Tells subject not to begin test until instructed to do so and asks if subject understands. (DO YOU UNDERSTAND?)
4	Tells subject to take nine heel-to-toe steps on the line & demonstrates.
5	Explains and demonstrates turning procedure.
6	Tells subject to return on the line taking nine heel-to-toe steps.
7	Tells subject to count steps out loud.
8	Tells subject to look at feet while counting.
9	Tells subject not to raise arms from sides.
10	Tells subject not to stop once they begin.
11	Asks subject if all instructions are understood. (DO YOU UNDERSTAND?)

# Walk & Turn

## Impairment Clues

1	<b>B</b>	Loses Balance During Instructions
2	<b>S</b>	Starts Too Soon
3	<b>S</b>	Stops While Walking
4	<b>O</b>	Steps Off The Line
5	<b>W</b>	Wrong Number of Steps
6	<b>H</b>	Fails to Touch Heel to Toe
7	<b>A</b>	Raises Arms to Balance
8	<b>T</b>	Improper Turn

## Impairment Scoring

Maximum Number of clues for Walk & Turn	8
<i>Minimum Number of Clues of Intoxication to indicate a BAC Level of .08 or Above</i>	<b>2</b>

# One Leg Stand

1	Instructions given from a SAFE POSITION.
2	Tells subject to stand straight, place feet together, and hold arms at sides.
3	Tells subject not to begin test until instructed to do so and asked if subject understands. (DO YOU UNDERSTAND?)
4	Tells subject to raise one leg, either leg, approximately six (6") from the ground, keeping raised foot pointed out, and gives demonstration.
5	Tells subject to keep both legs straight and to look at elevated foot.
6	Tells subject to count in the following manner: one thousand and one, one thousand and two, one thousand and three, until told to stop, and gives demonstration. (DO YOU UNDERSTAND?)
7	Checks actual time subject holds leg up. (Time for <u>30</u> seconds)



# One Leg Stand

## Impairment Clues

1	P	Puts Foot Down
2	U	Uses Arms to Balance
3	S	Sways
4	H	Hops

## Impairment Scoring

Maximum Number of Clues for One Leg Stand	4
<i>Minimum Number of Clues of Intoxication to indicate a BAC Level of .08 or Above</i>	<b>2</b>

# Iowa Code 125

## **CHEMICAL SUBSTANCE ABUSE**

# Definitions

## **125.1 DECLARATION OF POLICY.**

It is the policy of this state:

1. That substance abusers and persons suffering from chemical dependency be afforded the opportunity to receive quality treatment and directed into rehabilitation services which will help them resume a socially acceptable and productive role in society.

# Definitions

## 125.2 DEFINITIONS.

For purposes of this chapter, unless the context clearly indicates otherwise:

13. *"Intoxicated person"* means a person whose mental or physical functioning is ***substantially impaired*** as a result of the use of a chemical substance.

## 125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL.

1. An intoxicated person may come voluntarily to a facility for emergency treatment.
  - A person who appears to be intoxicated or incapacitated by a chemical substance in a public place and **in need of help** may be taken to a facility by a peace officer under section 125.91.
  - If the person **refuses** the **proffered help**, the person **may be arrested** and charged with intoxication under section 123.46, if applicable.

# Intoxication Persons *In Need of Help*

**Iowa Code 125.2(13)** – “Intoxicated Person means a person whose mental or physical functioning is ***substantially impaired*** as a result of the use of a chemical substance.”

- Should be treated as a person who is sick and not just intoxicated.
- If you find someone who is passed out on the street you should call an ambulance and send them to a hospital.

## 125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL.

2. If no facility is readily available the person may be taken to an emergency medical service customarily used for incapacitated persons.
  - The peace officer in detaining the person and in taking the person to a facility shall make every reasonable effort to protect the person's health and safety. In detaining the person the detaining officer may take reasonable steps for self-protection.
  - ***Detaining a person under section 125.91 is not an arrest and no entry or other record shall be made to indicate that the person who is detained has been arrested or charged with a crime.***

## 125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL.

3. A person who arrives at a facility and voluntarily submits to examination shall be examined by a licensed physician as soon as possible after the person arrives at the facility. The person may then be admitted as a patient or referred to another health facility. The referring facility shall arrange for transportation.
4. If a person is voluntarily admitted to a facility, the person's family or next of kin **shall be notified** as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, the request shall be respected.



## 125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL.

### 5. A **peace officer**

- who **acts in compliance** with this section is acting in the course of the officer's official duty
- and **is not criminally or civilly liable** therefore, unless such acts constitute willful malice or abuse.

## **125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL.**

6. If the physician in charge of the facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.
7. A licensed physician and surgeon or osteopathic physician and surgeon, facility administrator, or an employee or a person acting as or on behalf of the facility administrator, is not criminally or civilly liable for acts in conformity with this chapter, unless the acts constitute willful malice or abuse.

# Iowa Code 125.91

## Emergency Detention

The procedure prescribed by this section

- **shall only be used**
- for an **intoxicated person**
- who has **threatened, attempted, or inflicted physical self-harm or harm on another**
- **and is likely to inflict physical self-harm on another**
- unless **immediately detained.**

# Iowa Code 125.75

## Involuntary Commitment

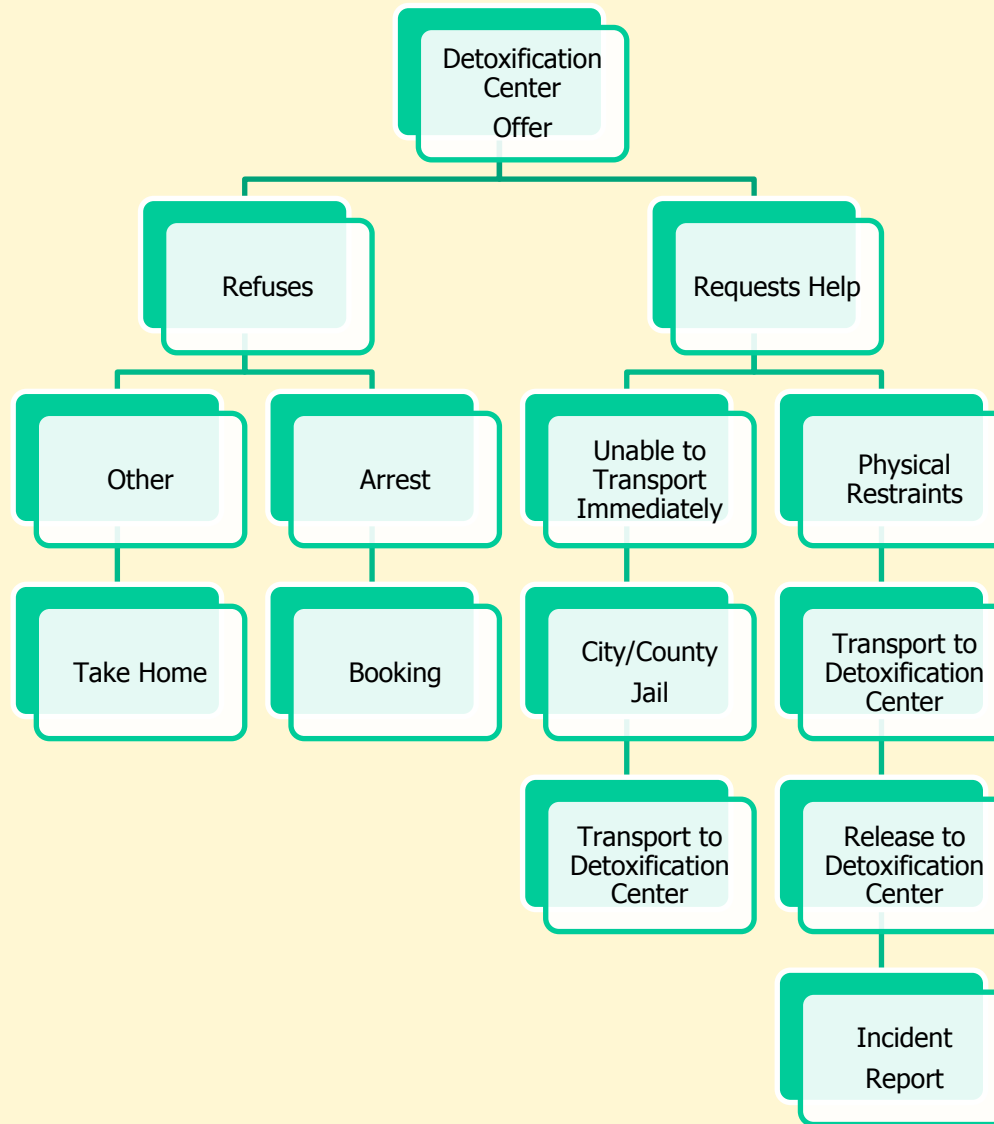
- Proceedings for the involuntary commitment or treatment of a chronic substance abuser to a facility may be commenced by the County Attorney or an interested person. . .
- Iowa Code - 125.75A is for Juvenile Involuntary Commitments

# 125.40 (3)

## Criminal Laws Limitations

3. ***Nothing*** in this chapter affects any law, ordinance, resolution or rule ***against drunken driving, driving under the influence of alcohol or other chemical substance, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery or other equipment, or regarding the sale, purchase, dispensing, possessing or use of alcoholic beverages or beer at stated times and places or by a particular class of persons or regarding the sale, purchase, possession or use of another chemical substance.***

# Intoxication Process



# Moot Court Practical Exercise

## Role Players

- **Bartender**
- **Three Card Players**
- **Suspect**
- **Spouse**
- **Two Police Officers**



# Moot Court Practical Exercise



PUBLIC INTOXICATION & CHEMICAL SUBSTANCE ABUSE  
IOWA LAW ENFORCEMENT ACADEMY  
7105 NW 70<sup>th</sup> Avenue  
Johnston, Iowa 50131-1824

CLASS # \_\_\_\_\_

DATE: \_\_\_\_\_

## Scenario Players

TITLE	NAME
Suspect	
Spouse	
Bartender	
Card Player #1	
Card Player #2	
Card Player #3	
Police Officer #1	
Police Officer #2	

### Scenario Instructions/Cautions:

- Limit or Eliminate Profanity
- Act With Professionalism (*Others Are Watching*)
- Except for Officers, All Others Change into Street Clothes